

September 29, 2004

Dave K. Miles  
UDOT Hearing Officer  
4501 South 2700 West  
Salt Lake City, Utah 84119-5998

**Re: Appeal of Denial of Steven Schroeder's T-299 Billboard Application on I-15,  
Mile Post 304.11**

Dear Mr. Miles:

By and through its undersigned counsel, the Utah Department of Transportation, Region Two ("Region Two"), hereby submits argument in support of its denial of the above-referenced permit application.

FACTUAL BACKGROUND

On August 12, 2004, Region Two denied a T-299 outdoor advertising permit application submitted by Steven Schroeder. Previously, another party owned a non-conforming sign at the proposed location; however, that party's permit to maintain a sign expired on July 13, 2004, due to termination of the right to use the property per Utah Code Ann. § 72-7-507(2)(a). Mr. Schroeder then applied for a permit to locate a sign on the west side of Interstate 15 at milepost 304.11 in Salt Lake County.

After measuring the distance from the proposed sign site to the point of pavement widening for the interchange, Region Two Permit Officer Shawn Debenham concluded that the proposed sign location would be within 500 feet of the interchange – a violation of Utah Code Ann. § 72-7-505(3)(c)(i)(A). Accordingly, a new permit cannot be issued for construction of the sign because the proposed location is illegal.

### ISSUE

The issue on appeal is whether Region Two properly denied Mr. Schroeder's application to construct a sign within the interchange, in an area adjacent to the exit from the main-traveled way. Under state law, an interchange is measured along the interstate highway or freeway from the sign to the nearest point of beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way.

### ARGUMENT

Region Two properly denied Mr. Schroeder's application. The proposed site is prohibited by law because it is within the interchange. Utah Code § 72-7-505(3)(c)(i)(A) states that ". . . signs may not be located on an interstate highway or limited access highway on the primary system within 500 feet of an interchange . . . **measured along the interstate highway or freeway from the sign to the nearest point of beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way.**" *Id.* (emphasis added); see also Utah-Federal Agreement, Section III.A.2.(b) (using same measurement standard).<sup>1</sup>

Utah Code Ann. § 72-7-502(9) defines an "interchange or intersection" as "those areas and approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route." As illustrated in the photograph attached as Exhibit A, the proposed site is adjacent to an entrance to the main-traveled way in this area (i.e., an on-ramp). Specifically, it is within 500 feet of the point of pavement widening for the entrance to the main-traveled way. Therefore, it does not meet the spacing requirement of Utah Code Ann. § 72-7-505.

The paramount concern is preventing motorists from being distracted by advertisements while transitioning off of the interstate. This is the policy concern upon which the Utah-Federal Agreement is based. Without interchange spacing restrictions, a fundamental component of the Department's outdoor advertising control program would become so vague as to be unenforceable.

Claiming property rights in the sign, Mr. Schroeder asserts that even if the sign is in a non-conforming location, Region Two must grant him a permit. Based on the facts alleged in

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<sup>1</sup>Failure by UDOT to enforce the Agreement may subject the Utah Department of Transportation to a penalty against its annual federal transportation aid apportionment. The maximum penalty is 10% of the apportionment. See 23 U.S.C. § 131(b) and 23 C.F.R. § 750.705.

Mr. Schroeder's appeal, it is the Region's position that he only had a contractual right to receive lease payments from the owner of the sign. He was not the permit holder or the sign owner. It is undisputed that he failed follow the procedures set forth in UDOT rules to transfer ownership of the permitted sign before he terminated the lease. *See* Utah Admin. Code R933-2-4(13).

When Mr. Schroeder terminated the lease, he effectively terminated the state permit because that permit is contingent on the right to use the property for outdoor advertising purposes. *See* Utah Code Ann. § 72-7-507(2)(a). Under Utah Code Ann. § 72-7-507, Mr. Schroeder must now obtain a permit to construct a sign at the proposed location. He cannot do so because his requested location is within 500 feet of the interchange of Interstate 15 and 4500 South.

#### CONCLUSION

Region Two properly denied Mr. Schroeder's application. Utah Code Ann. § 72-7-505 clearly prohibits the Region from granting new sign permits for locations within the interchange. For this reason, we request that you deny Mr. Schroeder's appeal in its entirety.

Respectfully,

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Mark E. Burns  
Assistant Attorney General

cc: Wade R. Budge, Attorney for Steven Schroeder  
Shawn Debenham, Region Two